

ONTARIO COURT OF JUSTICE

IN THE MATTER OF an appeal under Section 135 of the
Provincial Offences Act, R.S.O. 1990, c. P.33, as amended

B E T W E E N :

HER MAJESTY THE QUEEN,

Respondent

— AND —

DEVINA HIRAMAN,

Appellant

Before Justice Douglas B. Maund

Heard on 11 June 2013

Reasons for Judgment released on 17 June 2013

M. Gauthey for the Respondent, Town of Caledon

G. Parker for the Appellant, Devina Hiranman

REASONS FOR APPEAL

Maund, J.:

[1] This is an Appeal by Devina Hiranman pursuant to the Provincial Offences Act from her conviction by His Worship Justice of the Peace D. Dudar on January 25th, 2013. Ms. Hiranman was convicted of the offence of “Fail to Stop for School Bus – Meeting”, contrary to Section 175(11) of the Highway Traffic Act.

[2] The main issue advanced on this Appeal is whether the offence upon which the Appellant was convicted is an absolute liability offence as found by Justice of the Peace

Dudar. The Appellant submits that Section 175 of the Highway Traffic Act should be considered a strict liability offence and, as such, the offence of the mistake of that fact should have been available to the Appellant and considered by the Court.

[3] I thank counsel for referring the Court to the relevant authorities on this issue of law which flow from R v Sault Ste. Marie [1978] 2 SCR 1299. The review of the factors for consideration by the Ontario Court of Appeal in R v Kanda 88 O.R. (3d) 732 (CA) was particularly helpful. Sault Ste. Marie sets out four considerations for a review of the categories of provincial offences including:

- 1/ The overall regulatory pattern of which the offence was part;
- 2/ The subject matter of the legislation;
- 3/ The importance of the penalty; and
- 4/ The precision of the language used.

[4] An important principle from Sault Ste. Marie which has been affirmed since by the Supreme Court of Canada is that there is a strong presumption in favour of strict liability in an interpretative contest between strict and absolute liability offences.

[5] The Highway Traffic Act creates all three categories of provincial offences. The offence contrary to Section 175(11) of “failing to stop for a school bus—meeting,” is designed to ensure the safety of the public and of the safety of children in particular, during their transportation to and from school. The wording of this section does not include words of exemption which might suggest a potential defence of due diligence. I also find that there is no clear language within part I of the Highway Traffic Act which expressly states that the

exercise of due diligence is no defence to this charge. Such wording is found, for example, in relation to the charge contrary to Section 84.1(1) concerning wheels becoming detached from commercial vehicles. That express limitation appears in subsection 84.1(5) and this example was cited in Kanda by the Court of Appeal. In any event, the particular language in the section is neutral.

[6] The penalty section for this offence is at section 175(17). It provides a range of fines for a first offence of between \$400.00 and \$2,000.00 and for each subsequent offence fines between \$1,000.00 and \$4,000.00 or for a term of imprisonment of not more than six months. Within the regulatory scheme of the Highway Traffic Act, these are a not an insignificant range of penalties. The prosecutor submits that as the Crown proceeded as a Part 1 offence, Section 12 of the Provincial Offences Act would not permit any custodial disposition for this offence. And therefore imprisonment cannot be an issue. With respect, I cannot agree with the Crown that the mode of procedure elected in this particular offence can be dispositive on this issue of the appropriate category of the offence. In the event that the matter proceeded under part III of the Act, the convicted party for any subsequent offence, if so found, would be at risk of imprisonment. This potential penalty suggests that the charge is a strict liability offence.

[7] Considering all of the factors in Sault Ste. Marie, I have concluded that the presumption in favour of strict liability is not displaced. Accordingly, I find that a defence of mistake of fact or due diligence was available to the Appellant at trial. As I have come to this conclusion, I find that the learned Justice of the Peace could not have applied the correct test for the potential defences available to the Appellant at trial.

[8] The prosecutor submits that the Justice did not accept the evidence of Ms. Hiranman and would have found her guilty in any event. Whether that was the case or not, I do not believe that it is in the interest of justice to remit this matter for consideration at a new trial. To my knowledge, the point of law before me on this Appeal has never been decided or reported and the Order of a second trial would be unfair to the Appellant.

[9] Accordingly and for these reasons I am allowing the appeal and entering an acquittal.

Released: June 17, 2013.

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Justice Douglas B. Maund